D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 480/2005
(Jai Narain Vyas University, Jodhpur & Anr. Vs. Kishore Kumar & Others.)

Date of order :: 22.05.2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE DINESH MAHESHWARI

Miss Kusum Rao for the appellants.
Shri P.S.Bhati for the respondents.

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This special appeal is directed against part of the order of learned Single Judge dated 21.03.2005 in S.B.Civil Writ Petition No.1528/2005 by which while allowing the writ petition and issuing direction to the appellant-University to hold separate examination for the concerned students, the learned Judge awarded "exemplary" cost of Rs.10,000/- to each of the nine petitioners.

Brief facts of the case are that examination forms/fees were accepted from the writ petitioners for appearing in a compartmental examination to improve their percentage/ marks. After about five months, their applications were rejected on the ground that the course of final year had been amended, and they cannot be permitted to take the examination. We are of the view that the respondents acted under completely misconceived notion. The writ petitioners belonged to 2003-2004 batch and the amended course which came into force in 2004 could not be applied to them. However, it is not necessary to go into that aspect. Pursuant

to the direction of the learned Single Judge, special examination was held and the writ petitioners were allowed to appear. At this stage the only question is whether the learned Judge was justified in awarding cost and if so, to what extent?

In the facts and circumstances, the learned Judge rightly disapproved the conduct of the respondents-appellants herein, and, therefore, it cannot be said that he wrongly exercised discretion in awarding cost. However, as regards the amount, after hearing counsel for the parties, we are of the view that consolidated cost of Rs.5000/- would serve the purpose. The amount may be paid to the Rajasthan State Legal Services Authority. We are also of the view that the amount should be recovered from the official (s) who took the decision to reject the applications of the writ petitioners. The Vice Chancellor shall identify the official (s) and recover the amount from their salary after notice. While the recovery may take time, the University shall deposit the amount within four weeks.

The order of the learned Single Judge is modified to this extent and the appeal is accordingly disposed of.

(DINESH MAHESHWARI), J. **(S.N. JHA), C.J.**

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